

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ANTHONY D. AMAKER,

Plaintiff,

-against-

K. GERBING; P. EARLY; S. ROBERTS; S. BENNETT; P. WOLFF; DR. GUSMAN; C.O. J. RIO; C.O. K. BARBER; LT. JOHN DOE; DEP. COMM. ANTHONY J. ANNUNCI; DEP. COMM. JEFFERY MCCOY, DIRECTOR OF SHU; D. VENETOZZI; JOSEPH BELLNIER,

Defendants.

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17-CV-3520 (NSR)

ORDER TO AMEND

NELSON S. ROMÁN, United States District Judge:

Plaintiff filed this complaint while he was incarcerated at Bare Hill Correctional Facility (“Bare Hill”), in the custody of the New York State Department of Corrections and Community Supervision (DOCCS), but he has since been released.¹ By order dated October 15, 2019, Chief Judge Colleen McMahon held that Plaintiff’s complaint failed to state a claim on which relief could be granted but permitted Plaintiff to file an amended complaint.² On January 13, 2020, Plaintiff filed an amended complaint, and this matter was reassigned to my docket.

¹ Because Plaintiff is barred from filing any new action *in forma pauperis* (IFP) while a prisoner, *Amaker v. Annucci*, ECF 7:14-CV-9692, 48 (KMK) (S.D.N.Y. Sept. 30, 2016), the Court initially denied Plaintiff’s IFP application and dismissed the complaint without prejudice to Plaintiff’s refiling it. Plaintiff paid the \$400.00 in filing fees, and on August 26, 2019, the Court reopened this action.

² By order dated October 2, 2019, the Court severed the claims in Plaintiff’s complaint arising at Bare Hill and transferred those claims to the United States District Court for the Northern District of New York, where an action was opened under docket number 9:19-CV-01253-LEK-ATB (N.D.N.Y.).

In his amended complaint, Plaintiff names “Lieutenant John Doe” as a defendant in the caption. Plaintiff fails, however, to plead any facts in the body of the complaint about what Lieutenant John Doe did or failed to do that violated Plaintiff’s rights. Plaintiff thus fails to state a claim on which relief can be granted against Lieutenant John Doe. 28 U.S.C. § 1915A(b)(1)

District courts generally grant a *pro se* plaintiff an opportunity to amend a complaint to cure its defects unless it would be futile to do so. *See Hill v. Curcione*, 657 F.3d 116, 123–24 (2d Cir. 2011); *Salahuddin v. Cuomo*, 861 F.2d 40, 42 (2d Cir. 1988). The Court grants Plaintiff leave to amend the complaint, within 30 days of the date of this order, to replead his claims against Lieutenant John Doe.

If Plaintiff chooses to file a Second Amended Complaint to replead his claims against Lieutenant John Doe, he must name Lieutenant John Doe in the caption of the Second Amended Complaint and plead facts in the body of the Second Amended Complaint about what Lieutenant John Doe did or failed to do that violated Plaintiff’s rights.³ Because Plaintiff’s Second Amended Complaint will completely replace, not supplement, the amended complaint, any other facts or claims that Plaintiff wishes to maintain must also be included in the Second Amended Complaint.

No summons will issue at this time. If Plaintiff files a Second Amended Complaint as directed, the Court will screen the complaint under 28 U.S.C. § 1915A. If Plaintiff fails to file a Second Amended Complaint within 30 days, then the Amended Complaint will be deemed the

³ The naming of John Doe defendants does *not* toll the three-year statute of limitations period governing Plaintiff’s claims under 42 U.S.C. § 1983. Because the events giving rise to Plaintiff’s claims occurred in or about 2016, if Plaintiff files a Second Amended Complaint and pleads claims under 42 U.S.C. § 1983 against Lieutenant John Doe, Plaintiff may wish to include any facts that would demonstrate the claims should not be time-barred.

operative complaint, and the Court will dismiss Plaintiff's claims in the Amended Complaint against Lieutenant John Doe for failure to state a claim on which relief can be granted.⁴

CONCLUSION

The Clerk of Court is directed to mail a copy of this order to Plaintiff and note service on the docket. Plaintiff is granted leave to file a Second Amended Complaint that complies with the standards set forth above. Plaintiff must submit the Second Amended Complaint to this Court's Pro Se Intake Unit within 30 days of the date of this order, caption the document as a "Second Amended Complaint," and label the document with docket number 17-CV-3520 (NSR). For Plaintiff's convenience, a Second Amended Complaint form is attached to this order. No summons will issue at this time.

If Plaintiff does not file a Second Amended Complaint within 30 days, the Amended Complaint will be deemed the operative complaint, and the Court will dismiss Plaintiff's claims against Lieutenant John Doe for failure to state a claim on which relief can be granted. *See* 28 U.S.C. § 1915A(b)(1).

SO ORDERED.

Dated: *March 2, 2020*
White Plains, New York


NELSON S. ROMÁN
United States District Judge

⁴ Plaintiff may also notify the Court within this 30-day period that he opts not to file a Second Amended Complaint, and the Court will then dismiss Plaintiff's claims against Lieutenant John Doe in the Amended Complaint.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Write the full name of each plaintiff.

CV _____
(Include case number if one has been assigned)

-against-

**SECOND AMENDED
COMPLAINT**
(Prisoner)

Do you want a jury trial?

Yes No

Write the full name of each defendant. If you cannot fit the names of all of the defendants in the space provided, please write "see attached" in the space above and attach an additional sheet of paper with the full list of names. The names listed above must be identical to those contained in Section IV.

NOTICE

The public can access electronic court files. For privacy and security reasons, papers filed with the court should therefore *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number. See Federal Rule of Civil Procedure 5.2.

I. LEGAL BASIS FOR CLAIM

State below the federal legal basis for your claim, if known. This form is designed primarily for prisoners challenging the constitutionality of their conditions of confinement; those claims are often brought under 42 U.S.C. § 1983 (against state, county, or municipal defendants) or in a "Bivens" action (against federal defendants).

Violation of my federal constitutional rights

Other: _____

II. PLAINTIFF INFORMATION

Each plaintiff must provide the following information. Attach additional pages if necessary.

First Name	Middle Initial	Last Name
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State any other names (or different forms of your name) you have ever used, including any name you have used in previously filing a lawsuit.

Prisoner ID # (if you have previously been in another agency's custody, please specify each agency and the ID number (such as your DIN or NYSID) under which you were held)

Current Place of Detention

Institutional Address

County, City	State	Zip Code
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III. PRISONER STATUS

Indicate below whether you are a prisoner or other confined person:

Pretrial detainee

Civilly committed detainee

Immigration detainee

Convicted and sentenced prisoner

Other: _____

IV. DEFENDANT INFORMATION

To the best of your ability, provide the following information for each defendant. If the correct information is not provided, it could delay or prevent service of the complaint on the defendant. Make sure that the defendants listed below are identical to those listed in the caption. Attach additional pages as necessary.

Defendant 1:

First Name	Last Name	Shield #
Current Job Title (or other identifying information)		
Current Work Address		
County, City	State	Zip Code

Defendant 2:

First Name	Last Name	Shield #
Current Job Title (or other identifying information)		
Current Work Address		
County, City	State	Zip Code

Defendant 3:

First Name	Last Name	Shield #
Current Job Title (or other identifying information)		
Current Work Address		
County, City	State	Zip Code

Defendant 4:

First Name	Last Name	Shield #
Current Job Title (or other identifying information)		
Current Work Address		
County, City	State	Zip Code

V. STATEMENT OF CLAIM

Place(s) of occurrence: _____

Date(s) of occurrence: _____

FACTS:

State here briefly the FACTS that support your case. Describe what happened, how you were harmed, and how each defendant was personally involved in the alleged wrongful actions. Attach additional pages as necessary.

INJURIES:

If you were injured as a result of these actions, describe your injuries and what medical treatment, if any, you required and received.

VI. RELIEF

State briefly what money damages or other relief you want the court to order.

VII. PLAINTIFF'S CERTIFICATION AND WARNINGS

By signing below, I certify to the best of my knowledge, information, and belief that: (1) the complaint is not being presented for an improper purpose (such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation); (2) the claims are supported by existing law or by a nonfrivolous argument to change existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Federal Rule of Civil Procedure 11.

I understand that if I file three or more cases while I am a prisoner that are dismissed as frivolous, malicious, or for failure to state a claim, I may be denied *in forma pauperis* status in future cases.

I also understand that prisoners must exhaust administrative procedures before filing an action in federal court about prison conditions, 42 U.S.C. § 1997e(a), and that my case may be dismissed if I have not exhausted administrative remedies as required.

I agree to provide the Clerk's Office with any changes to my address. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Each Plaintiff must sign and date the complaint. Attach additional pages if necessary. If seeking to proceed without prepayment of fees, each plaintiff must also submit an IFP application.

Dated

Plaintiff's Signature

First Name

Middle Initial

Last Name

Prison Address

County, City

State

Zip Code

Date on which I am delivering this complaint to prison authorities for mailing: _____